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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Judiciary

From: Natalie Scott, Assistant Revisor of Statutes

Jason Thompson, Senior Assistant Revisor of Statutes

Date: March 14, 2018

Subject: Bill Brief on HB 2459, as amended by House Committee

HB 2459 makes changes to the Kansas standard asset seizure and forfeiture act.

New Section 1 requires the Kansas bureau of investigation to establish the Kansas asset seizure and forfeiture repository by July 1, 2019. The repository shall gather information about each seizure made by a seizing agency including the 14 data points listed in subsection (a). The KBI shall maintain the repository and a public website. Each seizing agency shall report information to the repository regarding each seizure to the repository beginning on July 1, 2019. Prosecuting attorneys shall submit information to the seizing agency within 30 days after the disposition of the forfeiture and seizing agencies shall submit information within 60 days after the disposition. Starting in 2020, and annually thereafter, each law enforcement agency shall submit a forfeiture fund report to the repository. Each agency shall report the agency's state forfeiture fund balance, the total amount of deposits and a listing of expenditures from the preceding calendar year. These reports shall separate deposits and expenditures from forfeitures pursuant to state and federal law and the amounts held related to pending forfeiture actions.

The House Committee amendment added a subsection (e), beginning on the bottom of page 2. Starting in 2020, and annually thereafter, the KBI shall determine whether each agency's financial report matches the agency's seizing report. If the KBI determines that the reports do not substantially match, or that the agency has not submitted a financial report, then the KBI is required to notify such agency of the difference in reports. The agency shall correct the reporting error within 30 days. If the agency fails to do so, the KBI shall send the agency, and the county or district attorney for the county in which the agency is located, a certified letter notifying the agency that it is out of compliance and no forfeiture proceedings shall be filed on property seized by the

agency. When the agency has achieved compliance with the reporting requirements, the KBI shall send another certified letter notifying the agency that it is in compliance and forfeiture proceeding filings may resume. Finally, each year the KBI is required to report to the legislature any law enforcement agencies in the state that have failed to come into compliance with the reporting requirements,

Section 2 (page 3) amends K.S.A. 45-220 to direct open records requests for records submitted to the Kansas asset seizure and forfeiture repository to the law enforcement agency from which the record was originated.

Section 3 (page 5) amends K.S.A. 60-4101 to include New Section 1 in the Kansas standard asset seizure and forfeiture act.

Section 4 (page 5) amends K.S.A. 60-4106 to provide that conveyances used as a common carrier are not subject to forfeiture unless the owner in charge of the conveyance is a consenting party to a violation of the act.

Section 5 (page 6) amends K.S.A. 60-4107 to provide that attorneys engaged to represent an agency in a forfeiture proceeding cannot have a financial interest, either directly or indirectly, with the county or district attorney in the case of local agency seizures or the attorney general in the case of state agency seizures. It also prohibits the county or district attorney and the attorney general from receiving referral fees or personal financial benefit.

Section 6 (page 9) amends K.S.A. 60-4109 to provide that notice of a forfeiture action must include an affidavit describing the essential facts supporting forfeiture and copies of Judicial Council forms for petitioning for recognition of an exemption and for making a claim.

Section 7 (page 12) amends K.S.A. 60-4110 to provide that the plaintiff's attorney shall make an opportunity to file a petition for recognition of exemption. It also changes the number of days an interest holder in property has to file a claim or recognition of exemption from 30 days to 60 days and changes the compliance standard for a claim to substantial compliance. Current law provides that when one or more interest holders timely petition for recognition of exemption, the plaintiff's attorney is required to provide the seizing agency and the petitioner with a written recognition of exemption and statement of nonexempt interests relating to any interest in the property to each party within 120 days, and this bill changes that to 90 days. The time frame for an interest holder to file a claim on any property declared nonexempt is changed from 30 days to 60 days.

Section 8 (page 13) amends K.S.A. 60-4111 to provide that a claim by an owner or interest holder must be mailed to the seizing agency and the plaintiff's attorney within 60 days, changed from 30 days, and the prohibition of extensions for good cause is stricken. The compliance standard is changed to substantial compliance and claimants can assert the right against self-incrimination in a claim, in which case the court may draw an adverse inference from that assertion. This adverse inference shall not, by itself, be the basis of a judgment against the claim.

Section 9 (page 14) amends K.S.A. 60-4112 to remove the rebuttable presumption that items found in close proximity to contraband or an instrumentality of conduct giving rise to forfeiture are proceeds of the conduct and moves that factor into the list of factors that may be considered. It also removes the rebuttable presumption that property in or upon which controlled substances are located was being used to facilitate the act giving rise to forfeiture.

Section 10 (page 17) amends K.S.A. 60-4113 to change in rem forfeiture proceedings to match other types of forfeiture with respect to the substantial compliance requirement and the ability for the claimant to assert the right against self-incrimination. It also removes provisions relating to discovery and court determination of deadlines.

Section 11 (page 19) amends K.S.A. 60-4114 to align the claim filing deadlines for judicial in personam forfeiture proceedings.

Section 12 (page 20) amends K.S.A. 60-4117 to remove the current law on forfeiture fund reporting requirements after July 1, 2019, because New Section 1 will cover reporting after that date. This section also provides for the only allowable uses of forfeiture money by listing what is considered to be a special, additional law enforcement purpose.